

# General Terms and Conditions of Sale and Delivery

## § 1 General Stipulations, Scope

- (1) These General Terms and Conditions of Sale and Delivery (referred to hereinafter as "Sales Terms") apply exclusively. We do not acknowledge any General Terms of the ordering party or Buyer (referred to hereinafter as "Buyer") that deviate from or are contrary to the following Sales Terms, unless we have explicitly given our written (section 126 German Civil Code) consent to their application.[1] These Sales Terms also apply if Thies GmbH & Co. KG (referred to hereinafter as "Seller") renders performance with full knowledge of conflicting or different terms and conditions of Buyer without any reservation of rights.
- (2) These Sales Terms shall only apply vis-à-vis companies, legal entities governed by public law and special-purpose public funds (public sector).
- (3) Any individual stipulation concluded in individual cases with the Buyer (including subsidiary covenants and agreements, amendments and changes) shall always have priority over these Sales Terms. A written agreement or explicit written confirmation of the content of such agreements by the Seller shall be required.
- (4) These Sales Terms also apply in their most recently included version as a framework agreement for future sales and/or deliveries to the same Buyer without the Seller having to make reference to such once again in every individual case.
- (5) Declarations and notifications of legal importance that are to be issued by the Buyer to the Seller after signing of the Agreement (for example the setting of deadlines, notices of defect, declarations of revocation or reduction in price) must always be in writing to be effective.
- (6) References to the application of statutory provisions shall only serve the purpose of clarification. For this reason, statutory provisions shall also apply even without any such clarifying note if such are not directly changed or expressly ruled out by these Sales Terms.
- (7) Buyer and Seller may transfer this Agreement (principal agreement including Sales Terms) in its entirety or assign any of their rights or obligations arising out of this Agreement to third parties only by prior written consent of the other party.

## § 2 Conclusion of the Agreement, Provided Documentation

- (1) Quotes and Offers of the Seller are – in particular with respect to the conclusion of Agreement and with regard to quantity, price and delivery period – subject to change and non-binding. This is also the case if the Seller has provided the Buyer with a catalogue, technical documentation (for example drawings, plans, estimates, calculations, references to DIN standards), other product descriptions or documents, including in electronic form. The Seller preserves all rights all rights of ownership and copyrights on these. These may only be made accessible to third parties with Seller's explicit written consent.
- (2) The order placed for the purchase object by the Buyer shall be deemed to constitute a binding contractual offer. An order shall only be deemed to be valid after written confirmation of order is issued or upon the delivery of the goods to the Buyer as agreed upon (acceptance).
- (3) This acceptance is subject to a condition precedent (section 158(1) German Civil Code): It shall only become effective if the export control laws of the Federal Republic of Germany or the European Union as well as of the USA, as far as this is applicable from the U.S. point of view and German/European law does not conflict with its application, do not (any longer) stipulate a contractual prohibition for this legal transaction and the (export) license(s) required for this legal transaction has/have been issued. The parties explicitly rule out any retroactive effect (contra section 159 German Civil Code).
- (4) The installation of the purchase object takes place based on the General Conditions of Installation and Commissioning (Installation Conditions) of the Seller, which are stipulated separately.
- (5) Drawings, illustrations, measurements, weights or other performance data shall be binding only if expressly stipulated by written agreement; such data shall not be construed to constitute guarantees of quality.

## § 3 Prices

- (1) The price of the purchase object (purchase price) is understood to be Free Carrier delivery from the Seller's premises (FCA Incoterms® 2020), without discount or any other deductions, plus statutory VAT/sales tax. Any additional services agreed, for example destination charges, shall be charged to the Buyer in addition. In the case of deliveries and services performed into the EU, the Buyer shall provide the Seller with the Buyer's VAT-ID no.
- (2) The prices payable as per Quotation respectively Confirmation of Order are based on the current prices for raw materials and wage costs. In cases of effectively increase of these prices and costs the Seller may adjust the purchase price accordingly, taking reasonable account of the practices and customs that apply in business dealings and provided delivery is carried out more than nine (9) months from the conclusion of the Agreement.
- (3) The Buyer is responsible for the import operations, the import duties and the customs declaration according to the stipulations applicable in each case as well as any duties payable in the country of destination.

## § 4 Conditions of Payment, Default on Payment

- (1) The Seller's business place is the payment location. The purchase price and prices for additional services shall be due payable without any deductions and in the agreed currency to the Seller's bank account on the agreed date (§ 1 para. 3). The due time for payment arises however the latest upon delivery of possession of the purchase object respectively not later than eight (8) days from receiving the notification that the goods are ready for dispatch.
- (2) The Buyer shall be entitled to rights of set-off only if the Buyer's counter claims are legally established as res judicata, and are undisputed, or acknowledged by the Seller. In addition, the Buyer may exercise a retention right only if the Buyer's counterclaim is based on the same Agreement.

- (3) In the event that the Buyer is in arrears with payment, the Seller may claim interest on arrears in the amount of eight (8) percentage points above the respective base interest rate. The Seller retains the right to claim additional damage for delay due to breach of contract pursuant to CISG (e.g. but not limited to foreign currency losses in the case of liabilities in foreign currencies).
- (4) In the event that the Buyer has not cleared the agreed payment within a period of ten (10) days after receiving a reminder notice from the Seller, the Seller is entitled to declare the Agreement avoided pursuant to Art. 64 CISG by written declaration and to claim damages including claims for loss of profit (article 74 ff. CISG).
- (5) If following conclusion of the Agreement it becomes recognisable that the claim to the purchase price will be jeopardised as a result of deficient capability to render payment on the part of the Buyer (e.g. due to application for the opening of an insolvency proceeding, but not limited to this) or that the Buyer will not fulfil an important contractual obligation, the Seller shall be entitled to refuse performance and – if applicable after the setting of a deadline – revoke from the Agreement (section 323 of the German Civil Code). This is especially the case if the Buyer fails to comply with its obligation to cooperate in severe dimensions. In the case of contractual agreements on the manufacturer of unreasonable objects (custom manufacturing), the Seller may declare Revocation immediately. This shall not affect statutory provisions on the ability to waive setting a deadline.
- (6) Insofar as payments are executed by third parties, Buyer shall oblige the third party to always make the reference customer and business traceable for the Seller. In case of bank transfers, for example, this information must always be included as reference on transfer. If no such indication is given within the payment information to the Seller, the performance shall not be deemed to have been rendered vis-à-vis the Seller.

## § 5 Delivery and Default on Delivery

- (1) The delivery results FCA (Free Carrier) from the delivery plant in Coesfeld (FCA Incoterms® 2020), if nothing to the contrary emerges under the Agreement or individual subsequent alterations of the Agreement and individual stipulations (§ 1 para. 3).
- (2) Delivery dates or delivery periods that can be agreed with or without commitment shall be stated by WRITTEN declaration. Unless expressly agreed otherwise, the dates or periods stated by the Seller are non-binding.
- (3) Periods for delivery commence no earlier than upon the conclusion of the Agreement. The beginning of periods for delivery also presupposes receipt of the agreed down payment, where agreed the opening of a Letter of Credit in accordance with the Agreement and, if clarification of technical questions was reserved for later negotiation when the Agreement was concluded, the written declaration of the Seller that the technical questions are clarified.  
If subsequent alterations of the Agreement are mutually agreed, the altered delivery dates or periods shall be adequately extended; if necessary, delivery dates or delivery periods shall be agreed anew at the same time.
- (4) The Seller may withhold delivery until due payments have been made (and, as the case may be, until a Letter of Credit in accordance with the Agreement has been opened) by the Buyer in accordance with the AGREEMENT and all other obligations owed by the Buyer under the AGREEMENT that are necessary for the performance of the delivery of the purchase object.
- (5) The Buyer may demand that the Seller deliver six (6) weeks from having exceeded a non-binding delivery date or a non-binding delivery period. Upon receipt of the demand, the Seller shall be in default. Section 376 German Commercial Code (HGB) is excluded.
- (6) In the case of delay in delivery the Buyer may claim, after six (6) further weeks have elapsed and if the delay has been culpably caused by the Seller, fixed compensation for loss and damage amounting equal to zero point five per cent (0.5 %) for each further full week of delay up to a total of five per cent (5 %) on the value of that part of delivery which, as a consequence of the delay, cannot be used as intended. Any claim for damages shall also be capped at this maximum amount if the Buyer declares the avoidance of the Agreement due to the delay. The Buyer must plausibly document that financial damage was suffered due to the delay.
- (7) If the maximum liquidated damages according to para. 6 herein-above are reached, the Buyer - after he has fixed an additional reasonable period combined with the announcement that acceptance of delivery will be refused, at least however six (6) weeks, - may, if the Seller does not compete delivery before that date, notify the Seller in writing of the termination of the Agreement in respect of that part of the goods which are delayed, save where acceptance of partial performance should be an unreasonable demand. Any further claims against the Seller because of delayed delivery are excluded.
- (8) In the event that, whilst being in default with delivery, the Seller becomes unable to perform delivery, the Seller shall be liable within the afore-said agreed limits of liability. The Seller shall not be liable if the damage would have occurred even if delivery had been performed at the due date.
- (9) If a binding delivery date or a binding delivery period is exceeded, the Seller shall already be in default from the date of exceeding the delivery date or the delivery period. In that event, the Buyer's rights shall be subject to para. 6, 7 and 8 herein-above.
- (10) Force majeure or business disruptions occurring in the Seller's business, or in the business of the Seller's supplier, that temporarily prevent the Seller through no fault of his own from delivering the purchase object at the agreed date or within the agreed period of time, shall alter the dates and period mentioned in para. 2 bis 9 herein-above by the period of time during which performance is not possible due to such disruptions of performance. Force majeure shall be assumed if performance is prevented by circumstances beyond the party's control or especially by one of the following circumstances: fire, natural disasters, war, seizure, requisition, prohibition of export, embargo (compare § 2 para. 3) or other authority measures, general shortage of materials, restrictions in the use of power, industrial disputes or if a breach of contract of subcontractors is caused by any such circumstances.

# General Terms and Conditions of Sale and Delivery

The circumstances beyond the party's control and their discontinuation are to be reported to the other party immediately. Should such events lead to postponement of performance by more than four (4) months, any party, irrespective of other rights of withdrawal, may revoke from Agreement by written declaration. Other rights of Revocation shall not be affected.

- (11) Modifications in construction or in form, weight changes, deviations of color, and alterations of the scope of delivery, on the side of the Seller are reserved during the delivery period, provided such alterations or deviations are reasonably acceptable to the Buyer in consideration of the Seller's interests. In particular, but without limitation, changes to purchased parts (in particular, but not limited to, motors, flaps, ball valves, valves, pumps, trays, plates and control cabinets) will come into consideration, which may vary according to the choice of the subcontractor (e.g., but not limited to, color, shape, presentation, design, size, weight, deviations in surface quality). Typical construction changes are, for example, but not limited to, modified pipeline flow directions or optimizations of components. Acceptability regulations in the customer countries can also lead to reasonable construction changes. Where the Seller uses symbols or numbers to identify the order or the ordered purchase object, no rights can be derived from this alone.
- (12) Fulfillment of the Seller's delivery obligations is subject to the precondition that the Buyer punctually and properly performs his obligations., where agreed in particular (but not limited to) the timely opening of a Letter of Credit in accordance with the Agreement. The plea of non-performance of the Agreement is reserved.
- (13) Partial deliveries and partial performance are permissible.

## § 6 Conditions of Acceptance, Default on Acceptance

- (1) The Buyer has to collect the purchase object within ten (10) days following the notice of readiness for shipment at the latest. The costs incurred by the delay for storage, insurance, protection measures etc. will be charged to the Buyer. In this case the Seller shall be - without prejudice to further claims of the Seller - entitled in particular to charge stand-by fees in the amount of EUR 200 (two hundred) per day per machine respectively shipment. This amount can be raised or reduced if the Seller presents proof that the damage / loss suffered was higher or lower. The Seller shall set the Buyer a reasonable period for acceptance by written declaration if the Buyer does not accept the goods upon delivery. The Seller's right to require payment of the purchase price shall remain unaffected.
- (2) After expiration of the additional period the Seller is entitled to terminate the Agreement in whole or partly by written declaration and claim damages. These damages amount at least half of the net value of the goods for delivery or the delivery part not taken possession of; other rights of the Seller shall not be affected.
- (3) The risk of accidental loss and/or accidental deterioration of the purchase object shall pass to the Buyer according to Art. 67 et seq. CISG, but no later than on the date on which the Buyer defaults on acceptance.
- (4) In the event that the Seller does not exercise the rights under para. 1 and 2 herein-above, he may freely dispose of the purchase object and, without prejudice to other statutory and/or contractual rights, such as damages claims, deliver in lieu of the purchase object goods of the same type in compliance with the Agreement terms, within a reasonable period of time.

## § 7 Reservation of Title

- (1) Title in the purchased objects shall not pass to the Buyer until the Seller is in receipt of the full Agreement price. Until receipt of the full Agreement price by the Seller, the Buyer shall
  - keep the purchased objects properly stored and protected, complete and in good repair as well as operate them properly as long as they have already been placed into service.
  - insure the purchased objects with a reputable insurer for their full replacement value against all risks and prove this upon request of the Seller.
  - not sell, pledge, transfer ownership as a security, lease or otherwise dispose of the purchased objects without Seller's prior written consent.
- (2) If the applicable property laws do not acknowledge a reservation of title as provided for above or request additional preconditions such as but not limited to registration requirements etc., the Buyer undertakes to support the Seller at Seller's request to the best of his ability in order to fulfil these requirements or to establish a comparable security interest for Seller in relation to the purchased object. Reasonable costs thereby incurred shall be for Buyer's account. The Buyer shall inform the Seller if any dangers regarding the property of the Seller should occur. This applies especially to disposals of third parties or authority measures.
- (3) The transfer of risk as stipulated in this Sales Terms remains unaffected by the reservation of title.

## § 8 Seller's Responsibility for Conformity of the Goods

- (1) The Buyer may raise claims based on non-conformity of the purchase object only if he duly fulfilled his obligation to examine the purchase object and give notice of any non-conformity. The Buyer has to examine the purchase object in every respect for any lack of conformity with the contract immediately after the goods are physically transferred to him and to give notice of any non-conformity immediately after the non-conformity had been discovered. The notice has to be made that substantiated, that the Seller is able to make a clear-cut judgement on the nature, contents and scale of the non-conformity as well as to acknowledge the Buyer's intention not to accept the delivery of the purchase object as proper fulfilment of his duties.
 

The Buyer shall lose the right to claim non-conformity with the contract, if he does not give notice to the Seller by written declaration by the quickest possible means by which transmission is guaranteed (e.g. by telefax) immediately after he discovered or ought to have been discovered the non-conformity. Art. 44 CISG is excluded. After arrangement with the Seller the Buyer is responsible for the securing of all proofs.
- (2) The proof of careful treatment, adequate storage and maintenance of the purchase object devolves on the Buyer.

- (3) If the delivery was not fulfilled as contractually agreed, the Seller shall according to his choice be free to remedy such non-conformity by subsequent improvement or making a replacement, even in the case of fundamental non-conformity within twelve (12) weeks after the Buyer's request. The Seller is seeking a quick subsequent improvement respectively replacement, but can not accept shorter deadlines because of the spare part production where necessary, the delivery and the formalities for export and import. Replaced parts shall become the property of the Seller. The Buyer shall be obliged to collaborate to a reasonable extent in the re-working following the instructions of the Seller and under reimbursement of costs.
- (4) The Buyer may raise claims based on lack of conformity of parts installed to remedy the lack of conformity under the Agreement until the limitation period for the purchase object ends.
- (5) No claims are created on the grounds of non-conformity if there is a relationship of cause and effect between the emerging non-conformity and the fact that
  - the purchase object was handled improperly or put under excessive strain, e.g. , but not limited to cases of inappropriate use of operating and production materials/mediums (salts, water, etc.),
  - the purchase object was previously repaired or serviced by a service provider not accredited by the Seller and the Buyer should have recognised this, or
  - parts were installed in the purchase object the use of which is not permitted by the Seller, or the purchase object was altered in a manner not permitted by the Seller, or
  - the Buyer failed to observe the provisions relating to the handling, maintenance, servicing of the purchase object (e.g. operating instructions).
- (6) If the Seller does not remedy the non-conformity (including defects of title) in accordance with the preceding paragraphs, the Buyer is entitled to a reasonable pro rata reduction of the purchase price. If the lack of conformity is fundamental as defined by article 25 CISG, the Buyer may demand termination of the Agreement after fruitless elapse of the deadline according to para. 3 herein-above, except where the Seller delivers prior to termination.
- (7) Natural wear-and-tear shall not create any claims based on non-conformity, whatsoever.
- (8) Claims for compensation for damages and reimbursement of futile expenses based on a non-conformity of the purchase object shall additionally be subject to § 11.

## § 9 Adherence to Statutory Provisions under Law Governing Export Controls

The obligation on the part of the Seller and the party receiving the goods to fulfil the AGREEMENT shall be subject to the proviso that the execution of the AGREEMENT is not prohibited or negatively affected by applicable export-control provisions of the Federal Republic of Germany or the European Union.

In addition, this obligation is subject to the proviso that the execution of the Agreement is not prohibited or negatively affected by other applicable provisions under export-control law, in particular the law of the USA, as far as it is applicable from the U.S. point of view and German/European law does not conflict with its application.

Should trade policy or other factual or legal developments emerge, that the Agreement or certain performances owed under the Agreement are or will become subject to government approval or fall or will fall under a prohibition ban, the parties shall be obligated to consult over alternative Agreement designs with the aim of adopting an amendment to the Agreement by mutual agreement.

## § 10 Exclusion of Liability for Damage Incurred in Connection with Export-Control Law

The Agreement shall be deemed to be null and void if it relates to a legal transaction that is prohibited under the law of the Federal Republic of Germany resp. the European Union or the law of the USA, as far as it is applicable from the U.S. point of view and German/European law does not conflict with its application, and shall be provisionally invalid to the extent that it relates to a legal transaction that requires an (export) license.

Notwithstanding provisions to the contrary in the Agreement, the Seller shall not be liable for damage, losses or any other costs that emanate from adherence to export-control provisions of the Federal Republic of Germany resp. the European Union or the law of the USA, as far as it is applicable from the U.S. point of view and German/European law does not conflict with its application, including, but not restricted to those which

- a) emanate for this legal transaction from a negligent or unrecognised contractual prohibition or an approval of the Agreement that is not received under the said export-control provisions as long as failure to obtain approval is not due to the willful intent or gross negligence of a party,
- b) lead to the execution of the Agreement being prohibited or negatively affected by the said export-control provisions,
- c) emanates from delays as a result of government license obligations and/or comparable procedures that have not been caused by a party acting with willful intent or in a grossly negligent manner.

## § 11 Liability

- (1) Claims of the Buyer for compensation for damages and reimbursement of futile expenses based on a non-conformity of the purchase object are subject to the condition that the lack of conformity is fault of the Seller.
- (2) There are no other express or implied warranties. Any statement about the production and/or commercial efficiency of a machine shall only be regarded as an estimate and not as a warranty or binding statement. No liability is accepted for materials or accessories purchased at the instigation of the Buyer.
 

No liability is accepted for parts supplied which are subject to premature wear on account of the nature of the materials of which they are made, particularly moving parts, or the type of use.

# General Terms and Conditions of Sale and Delivery

The Seller has no liability for defects which arise from the design prescribed by the Buyer, in particular no liability attaches to the Seller for defects resulting from the following causes: poor maintenance, use of non-original Thies spare parts, changes without the written consent of the Seller, badly performed repairs by the Buyer and normal wear and tear.

Because of the obvious corrosion problem, we point out in particular that exclusively Glauber salt (sodium sulfate) is to be used as permitted operating and production material/medium, not Common salt (sodium chloride).

- (3) If the Seller is not tenable for the impossibility of performance, all claims of the Buyer shall be deemed extinguished.
- (4) If the Seller is liable to pay compensation for damage that was caused by negligence (but not by gross negligence), the Seller's liability shall be limited as follows: The Seller shall be liable only for breached obligations that are essential to the Agreement, for example obligations that the Agreement, according to its content and purpose, is particularly designed to impose, or without the performance of which the implementation of the purchase Agreement is not possible and on the observance of which the Buyer regularly relies and may rely. This liability is limited to the typical damage that is foreseeable at the time of entering into the Agreement; the typical damage shall only comprise damage to the purchase object itself, not however any consequential damage and/or lost profits. If the damage is covered by an insurance policy that the Buyer took out to cover the case in question (with the exception of fixed-sum insurance), the Seller shall be liable for any detriment suffered by the Buyer in connection therewith, e.g. insurance premiums or interest charged, only until such time as the insurance has finalized claim settlement.
- (5) In case of any violation of side obligations (also of pre- or post-contractual side obligations), the Seller only grants liability for damage which is caused by gross negligence and limited to a maximum of ten per cent (10 %) of the total final purchase price.
- (6) Regardless of whether the Seller is at fault, the Seller's liability in the case of fraudulent concealment of a defect, fraudulent misrepresentation, under a guarantee issued, or a risk assumed, and under the German Product Liability Act (Produkthaftungsgesetz - ProdHaftG), shall not be affected.
- (7) The personal liability of statutory representatives, persons employed in performing an obligation for whom the principal is vicariously liable and employees of the Seller for any damage caused through their respective slight negligence is excluded. In the case of damage caused through the gross negligence of above-said persons, with the exception of statutory representatives and executive/managerial employees, the limitation of liability applicable to the Seller shall apply mutatis mutandis.
- (8) The contractual liability for persons employed in performing an obligation for whom the principal is vicariously liable is with the exception of intent and gross negligence excluded in accordance with section 278 sentence 2 in conjunction with section 276 par. 3 German Civil Code.
- (9) The limitations of liability provided for in the present Section shall not apply in the case of injuries to life, the body or health.

## § 12 Delays Resulting from Official Government Measures

Any applications for (export) licenses required should be filed three months prior to the planned delivery. In the event that there are delays as a result of official government approval obligations and/or comparable procedures, the point in time of the performance shall be postponed commensurately in accordance with respective contractual obligations.

## § 13 Contractual Use and Further Supply of Contractual Goods by the Party Receiving Delivery

The Buyer may use the purchase object only for the purpose that it has provided notification of. In particular, the Buyer shall not be allowed to supply the purchase object to a third party if such third party is on a sanctions list integrated into the AGREEMENT via § 9.

## § 14 Export license, information obligations

- (1) The Seller is not aware of any circumstances that would prevent the issuance of an export license if required. However, the Seller does explicitly neither guarantee that a required export permit will be granted nor the possibility of issuing an required export permit.
- (2) The Buyer agrees to use its best efforts to support the Seller when obtaining an export permit. The Buyer shall be responsible for obtaining an import license if so required.
- (3) Notwithstanding other information obligations stipulated in this Agreement, each party shall support the other party in providing that information and documents (referred to in the following as: Information) which are required in order to meet the export control law integrated into the Agreement via § 9 or which are demanded by relevant government authorities in this regard.

This obligation may in particular also include Information on the end customer, the objective and the use of the purchase object in accordance with their intended purpose and shall not be excluded through non-disclosure obligations that may have been concluded previously. If necessary an exemption from a previously closed non-disclosure agreement can be demanded if an applicable provision under export-control law require technical details to be transmitted to the involved authorities.

## § 15 Expect Controls and Revocation of the Agreement

- (1) Each party may revoke the Agreement with ab initio effect if the government authority in charge
  - a) refuses to issue the (export) license or
  - b) fails to issue the required (export/import) license within a period of three (3) months after the delivery date.
- (2) The Seller may revoke the Agreement if the Buyer undertakes actions that encourage, allow one to expect or could result in a violation against export-control provisions integrated into the Agreement via § 9, in particular if there are justified reasons for believing that the party receiving the goods does not intend to use the goods for the communicated (§ 13) but for an illegal purpose.
- (3) The provisions cited in the foregoing are not based on the possibility to terminate the Agreement for reasons other than the ones stated in the foregoing.

## § 16 Time Barring (Statute of Limitation Period)

- (1) By way of deviation from section 438 para. 1 no. 3 of the German Civil Code the general time-bar period for claims emanating from delivery of non-conforming goods resp. goods subject to rights or claims of a third party shall be one year after transfer of risk.
- (2) Special statutory provisions for rights in rem to hand over objects held by third parties shall also remain unaffected (section 438 para. 1 no. 1 of the German Civil Code), for things that have been customary used for a building and have resulted in the defectiveness of the building (section 438 para. 1 no. 2 of the German Civil Code) as well as fraudulent intent or grossly negligent ignorance on the part of the Seller (Art. 3 of the act enacting the CISG in conjunction with section 438 para. 3 of the German Civil Code).
- (3) The aforesaid time-bar periods under purchase law shall also apply to contractual and non-contractual claims to damages on the part of the Buyer that are based on delivery of non-conforming goods resp. goods subject to rights or claims of a third party unless application of regular statutory time-bar periods (section 195, section 199 of the German Civil Code) would lead to a shorter time-bar period in individual cases. This shall at any rate not affect the time-bar periods laid down in the German Product Liability Act (Produkthaftungsgesetz - ProdHaftG). Otherwise solely statutory time-bar periods shall apply to damage claims by the Buyer.

## § 17 Place of Fulfilment, Applicable Law, Arbitration Clause

- (1) The place of performance for the delivery of the purchase object in the general case of delivery FCA (Free Carrier) from the delivery plant in Coesfeld (FCA Incoterms® 2020) is the delivery plant in Coesfeld. The place of performance for payments rendered by the Buyer and for all other reciprocal claims is the business offices (administrative headquarters) of the Seller.
- (2) The Agreement, including any and all disputes arising from or related to the AGREEMENT and all legal relationships between the Seller and the Buyer are governed by the substantive laws of Germany. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall apply, if no deviating regulations are determined, Art. 6 CISG.
- (3) (For) all disputes, differences of opinion and/or claims directly or indirectly emanating from or in connection with this Agreement including its validity, invalidity, its being null and void, practicability and impracticability, violation or dissolution,
  - a) with Buyers having their head business offices (administrative headquarters) in the EU, Switzerland, Norway or Iceland, the exclusive place of jurisdiction shall be the courts having jurisdiction over the Seller. The Seller shall be entitled, however, to take legal action at the general place of jurisdiction of the Buyer.
  - b) with Buyers which do not have any head offices (administrative headquarters) in the EU, Switzerland, Norway or Iceland, shall be finally settled according to the Arbitration Rules and the Supplementary Rules for Expedited Proceedings of the German Institution of Arbitration e.V. (DIS) in force on the date when the Notice of Arbitration is submitted in accordance with these Rules without recourse to the ordinary courts of law. The court of arbitration shall be composed of three arbitrators. The place of arbitration is Münster/Westf., Germany. The language of the arbitral proceedings is German. The choice of law in para. (2) shall also apply with respect to this arbitration agreement.



# General Conditions of Installation and Commissioning

## Technical personnel = fitters, technicians and engineers)

At the Buyer's request the services of technicians and engineers, hereafter called 'technical personnel' will be made available by the Seller, whereby the Buyer expressly accepts the following terms and conditions.

### 1. Technical Personnel

This term applies to all skilled and/or graduated members of the Seller's technical staff, employed in the installation and/or commissioning of the machinery, the choice being left to the Seller's discretion.

### 2. Working hours, Wages, Daily Allowances and Travelling Expenses

a) Installation wages are charged for the hours actually worked. Both the daily and weekly working hours will be agreed upon between the Buyer's and the Seller's technical personnel. Principally they are based on the legally fixed, normal working time of the country where the installation/commissioning is carried out. Wherever they exceed the normal, usual and contractual working time of the Seller's country they will be charged as overtime.

b) Travelling hours on regular working days will be charged at the normal wage rate without any additional charge of the overtime. Travelling hours on Sundays and public holidays will be paid for by the Buyer at the additional rate stipulated. If the technical personnel starts working immediately after arrival from a journey, the travelling time exceeding 4 hours is considered as working time.

When travelling by car, the travelling time will be charged as working time.

The technical personnel has been advised to take a lodging, if possible in the surrounding area of the site, if the transportation time from and to the lodging takes more than one hour per day, the exceeding time will be charged for the technical personnel as working time. Any travelling expenses will be to the debit of the Buyer.

Any working hour or waiting hour (overtime) beyond the normal, standard working time will be subject to an additional charge. If upon the Buyer's request the technical personnel will have to work overtime, this will have to be agreed upon between the Seller and the technical personnel. There will be an additional charge for every hour worked on a Sunday, a public holiday or during the night. Public holiday to be paid for are those included in the union agreements being in force at time of installation/commissioning. The hourly wage rates are based on the presently applicable union pay scale. Any change in this will accordingly effect the hourly wage rates.

c) During the time of installation/commissioning including travelling days and waiting time, the Buyer will pay to the technical personnel an allowance which is due in advance weekly in full for boarding/lodging and additional expenses.

The allowance will also be paid for days without work, i.e. Sundays, public holidays, waiting time. For travelling days this allowance will be reduced 50% if travelling started after 12 a.m. or ended before 12 a.m.

If proof should be given by the technical personnel that the allowance is not sufficient an adequate rate will be agreed upon between the Buyer and the Seller. Allowance will also be charged and claimed in case of illness or accident causing absence from work, the duration of which being subject to an agreement between the Buyer and the Seller.

d) It is understood that the Buyer will pay the technical personnel's return fare to and from the erection site from the Seller's country, including cost of transportation of the technical personnel's tools, luggage and other additional expenses. The technical personnel is entitled, at the Buyer's expense, to travel home for the Easter, Whit Sun, Christmas and New Year holidays, in case of extended installation/commissioning working periods abroad the technical personnel is entitled to a home visit at three monthly intervals at the Buyer's expense.

e) In the event of a member of the technical personnel falling sick, the Buyer will arrange for the necessary medical assistance and, if necessary, for the transfer to an adequate and suitable hospital, at the same time informing the Seller or the Seller's agent accordingly. The Buyer will advance any ensuing medical and hospital expenses, which will be returned to him by the Seller on presentation of the corresponding bills.

### 3. Payment for Installation/Commissioning Work

a) The installation/commissioning work will be invoiced on its completion or at monthly intervals in case of extended and longer working periods.

b) The Buyer will confirm to the Seller's technical personnel in writing the completion of the installation/commissioning work and will also sign the technical personnel's weekly working reports.

### 4. Insurance, Taxes and Similar Dues

a) The Seller will pay all fees due for health insurance, trade associates and other insurance payable at the permanent residence of the Seller's technical personnel.

b) The Buyer will pay any taxes or other dues payable in this country for the wages, allowance, etc. of the Seller's technical personnel.

c) The allowances, etc. agreed upon will be paid by the Buyer to the Seller's technical personnel without any deductions. Any taxes and other dues payable in the Buyer's country on the payments to be made to the Seller's technical personnel will be to his debit.

d) In case the laws of the Buyer's country do not allow full payment of the amounts due the Seller or the technical personnel without any deductions, then these amounts will be increased accordingly to ensure that both the Seller and the technical personnel will receive the full net amounts, due to them, without any deductions.

### 5. Miscellaneous

a) The Buyer undertakes to assist the Seller's technical personnel in finding suitable accommodation.

b) The Buyer undertakes to make available and take care of in good time at his own expense and risk

1) Assistant labour and, if required, also bricklayers, carpenters, mechanics and other skilled labour sufficient in number to meet the supplier's or his personnel's requirements.

2) All earth moving, foundation, building and scaffolding work including the necessary materials.

3) Any tools, handling and lifting equipment, lightning, heating and energy up to the site as well as sundry auxiliary materials such as oil, timber, sealing and cleaning materials, coal and the like required for the installation and commissioning.

4) Lockable, weather-protected premises with adequate lightning for storing machine parts, materials, tools and clothes in the immediate surroundings of the site.

5) Adequate safety measures at the site to protect the personnel against accidents.

c) To ensure that the installation can be started and carried out without delay and interruption immediately after the personnel's arrival, all the equipment required for the erection including the machines supplied will have been transported by the Buyer into the fully completed and prepared premises. All preliminary work, especially foundations and service mains must have been completed.

d) In case the installation is delayed without the Supplier's fault, any costs resulting from waiting times and necessary additional travelling by the personnel will be to the Buyer's debit. The same if without the Supplier's fault the equipment supplied cannot be put into operation or used immediately after completion of the installation.

### 6. Test and inspection

It is Buyer's obligation and responsibility to have the installation of the equipment checked and tested immediately after its completion has been reported followed directly by a test run if the latter has been stipulated in the contract.

### 7. Supplier's liability

The Supplier is responsible, to the exclusion of any other claims, (especially in respect of damages) for the proper assembly of the goods and undertakes to eliminate any assembly faults disclosed and made known by the Buyer within six months after completion of the assembly work provided always that such faults can be proved to have been due to neglect on the part of the Supplier and his employees. The liability period for faults is shortened by two months if the daily operation time of the plant amounts to more than 8 hours.

The Supplier's liability does not cover:

a) any faults due to circumstances brought by the Buyer

b) any work beyond the scope of the Supplier's supplies and services carried out by the fitter at the Buyer's request

c) auxiliary labour not provided by the supplier

d) non-observance of operating instructions

### 8. Installation Times, Limits and Risks

a) Time limits in respect of the installation work given by the Supplier shall be considered binding only if such time limits have been expressly specified as such.

b) The Buyer assumes all risks in connection with the installation work.

### 9. General Conditions

Unless otherwise provided for in the "General Conditions of Installation and Commissioning", the mutual rights and obligations of the Buyer and the Supplier's "Standard Conditions of Sales and Delivery" are valid. The same applies to the place of jurisdiction and the law to be applied.

## Performance Data

The company Thies is referred to hereinafter as **Seller** and the customer as **Buyer** regardless of their legal form.

### Scope of Delivery

The scope of delivery includes all parts and components, e.g. steam, water, pressure lines according to Seller's standard product design or according to a layout approved by Buyer. All supply and disposal units beyond the scope of delivery, as well as all foundations and other masonry work shall be provided by Buyer.

### Standards and Safety Regulations

Unless stated otherwise in the order confirmation, Seller manufactures machines, assemblies and components in accordance with the legal and regulatory requirements that are applicable in Germany, e.g. according to the national implementing laws and ordinance of Directive 2014/68/EU (Pressure Equipment Directive), Directive 2006/42/EC (Machine Directive) and Directive 2014/30/EU (EMC Directive).

Should additional country-specific regulations and standards apply at the setup site, which must be considered in the design of machines, assemblies or components, Seller must be informed of them in writing before the order is placed.

Machines that are delivered partly assembled will be regarded as ready for use only upon complete assembly. If the delivered machines are set up ready for use by Buyer itself within the area of application of the Machine Directive, Seller shall issue a declaration of conformity for them and apply a CE-mark on the machine. If incomplete machines are delivered, Seller shall issue an "Installation declaration for incomplete machines" in accordance with the Machine Directive.

If Seller's scope of delivery is to be combined with further machines that are provided by Buyer (hereinafter "Complete System"), Buyer shall be obligated to check whether safety equipment beyond Seller's scope of delivery is required, in order to comply with regulations and provisions for the Complete System. It is the Buyer's responsibility to provide such safety equipment for the commissioning or to order it on time in addition from Seller if necessary. Seller furthermore points out the requirement within the area of application of the Machine Directive of a general operating instruction taking an overall risk assessment into account in that case, as well as the requirement that the machines provided by Buyer must comply with the regulations of the Machine Directive. Buyer is responsible for the observation and implementation of these requirements.

Should Seller undertake in writing to issue a declaration of conformity (according to the Machine Directive) for a Complete System that exceeds its scope of delivery, it shall make this commitment exclusively subject to the condition that Buyer issues and hands over to Seller a declaration of conformity for all machines provided by it within due time beforehand and that it appends a CE-mark on these machines, or issues and hands over an installation declaration on time to Seller for all provided incomplete machines. In case Buyer fails to do so, Seller shall not issue a declaration of conformity for the Complete System and exclusively take the machines that it has itself delivered into operation, and reject any responsibility if Buyer itself takes the provided machines into operation contrary to the regulations of the Machine Directive.

### Assembly and Commissioning

Seller shall provide specialized personnel, e.g. assemblers, technicians or engineers for the assembly and commissioning of the scope of delivery as well as for the training of Buyer's personnel. For these services, Seller shall charge the costs incurred for travel to and from the site at the currently valid rates according to the attached list. Buyer shall provide assisting personnel for Seller's specialized personnel on request.

Seller's specialized personnel shall be responsible for the fault-free complete installation of the scope of delivery.

If assembly and commissioning is conducted by Buyer in its own responsibility, Seller shall not accept any warranty and/or extend any guarantee for any resulting claims of defects or subsequent deliveries.

If requested, Seller's specialized personnel can assist in the commissioning. For commissioning, Buyer shall provide sufficient quantities of test material. Seller shall not be liable for any deficient results in terms of textile engineering during the commissioning of the scope of delivery and its calibration phase.

Seller shall make standard recipes available for testing purposes. In addition, Seller can provide an application technician for advice on the usual conditions in the case of problems with textiles or dye.

### Acceptance of Pressure Devices

The pressure devices to be delivered by Seller that require an acceptance shall be accepted by a certified testing center. Documents on the completed acceptance shall be provided to Buyer. The costs for this purpose are included in the scope of delivery.

Any expenses beyond that for the testing prior to commissioning by a licensed inspection institute and CE-certification of the Complete System pursuant to the Machine Directive are not included in the scope of service.

Seller's plants are laid out by standard for the performance data specified on the operating datasheet.

### Additional Rule on Acceptance of Pressure Devices in Deliveries to Non-EU Countries

To be able to take requirements deviating from the aforementioned standards and safety regulations into account, Seller shall make all necessary drawings and data relating to the pressure devices that require acceptance available to the competent entities for presentation and preliminary approval.

If significant design changes result in the process, Seller reserves charging the costs arising for this to Buyer.

### Delivery in Accordance with the Contract

Within its responsibility for delivery in accordance with the contract, Seller warrants the fault-free functioning of the scope of delivery, in particular the even imbuing or bleaching. It is required that first-class raw materials, dyes, chemicals that meet the European standard and water in the defined water quality will be used.

Check the equipment regularly for signs of corrosion!

A risk of corrosion is caused by the use of

- chloride ions ( $\text{Cl}^-$ ), e.g. common salt ( $\text{NaCl}$ ) or other products containing chloride;
- chlorine dioxide ions ( $\text{ClO}_2^-$ ), e.g. sodium chlorite ( $\text{NaClO}_2$ ).

Chloride ions ( $\text{Cl}^-$ ) in the cooling and process water can likewise lead to corrosion.

### Use of these products is at your own risk.

The treatment bath becomes increasingly aggressive

- with rising chloride concentration,
- with rising temperature,
- with decreasing pH value,
- with the length of treatment time

Regarding the evident corrosion problems, we expressly point out that exclusively Glauber salt (sodium sulfate,  $\text{Na}_2\text{SO}_4$ ) may be used and not cooking salt (sodium chloride,  $\text{NaCl}$ ).

Seller's General Terms of Sale and Delivery apply in respect of the fault-free workmanship of the machines. The obligation for the delivery in accordance with the contract and according to the attached General Terms of Sale and Delivery is based on the condition that the scope of delivery can be assembled and taken into operation by Seller's specialized personnel without great delays upon arrival at the setup site. In the case the scope of delivery is stored, Buyer shall be responsible for any damages caused by improper storage.

### Information on Material Carrier Systems

The prerequisite for a successful, reproducible yarn dyeing or drying is that even densities and weights as well as dimensions of the textile material are processed.

In case there are material carriers (external carriers), even distribution of the air and treatment liquid must be ensured. Any greater loss of pressure that impairs the even treatment of coils must be prevented.

Furthermore, the textile material must be sealed off within the carrier system according to the shape of its layout, so that the air and liquid circulate exclusively through the material to be treated.

The use of plastic sleeves requires elastic closures, the effect of which is not cancelled out by the pump pressure/differential pressure. Winding coils that are dyed or dried must have a high-quality, even winding density of max.  $\pm 3\%$ . It is avoided this way that leaks are caused by the lowering of the coil columns during the dyeing/drying processes.

If strongly shrinking yarns are used, it is recommended to use radially elastic dyeing tubes to prevent an uneven compression of the yarn layers.

If strongly expanding yarns are used (e.g. acrylic), Seller recommends using star or top plates to limit the yarn expansion. An optimal coiling can reduce the yarn expansion. The yarn expansion in radial or axial direction must not exceed 2.5%, as quality will be lost otherwise.

### Notes on Pressurized Driers

Within the scope of its obligation for the delivery in accordance with the contract, Seller warrants the fault-free functioning of the assembly and an even drying result. However, this requires correct maintenance, correct preparation of the items to be dried and suitable material carriers. The bleaching/dyeing tubes must withstand the temperatures and pressures used in the drier without suffering deformations and they must also permit the correct sealing from each other as well as from the material carriers.

Deviations in the coil winding and in the coil diameter must not exceed or fall below max. 2.5%. The maximum winding diameter of a coil must not exceed 250 mm.

For an even residual moisture distribution in the dried coils, we recommend a levelling phase of at least three hours during which time the material carrier rests in normal ambient temperature after the completed drying process.

Our information on drying times and consumption data refers to rinsed lots that are not scrooped. Uneven winding forms, dyeing auxiliaries, scrooping agents, paraffins and naphthol dyes can have a negative effect on the performance of the drier. To avoid dye migrations, use suitable dyes and auxiliaries with fastness properties that are suitable for use in the drier.

### Setup Information for Control Units

The power switch cabinet must be positioned near the machine. Power lines with a length of up to 10 m are included in our delivery.

The climatic conditions listed in the attached operating datasheet must be given for the electrical equipment.

### Software

The software provided to Buyer as part of the delivery and its documentation must be treated as confidential. The embodiment of the software and its documentation will remain the sole property of Seller. Seller grants simple use rights to Buyer. Buyer is not authorized to reproduce the software and/or its documentation or make it accessible or disseminate it to third parties.

In individual cases and according to Seller's sole discretion, an exception can be approved with Seller's written agreement.

## Performance Data

### Operation and Safety

The scope of delivery includes the operating manual, the receipt of which Buyer's responsible employees shall confirm to Seller's specialized personnel on assembly and/or commissioning.

The operating manual contains important information on

- safety,
- product description,
- transport and assembly,
- operation,
- maintenance.

To ensure the use of the scope of delivery for its intended purpose, it is Buyer's responsibility that it is operated by personnel who have familiarized with the content of the operating manual. Lack of knowledge or failure to adhere to the safety rules and operating instructions contained in the manuals can entail serious personal injury and/or property damages. Seller will not accept any liability in such cases.

For high-temperature machines that are pressurized, pressurized air outlet lines must be installed at the site according to the locally valid noise and emission protection regulations. All inlets and outlet lines including pipework conducting steam and hot water must be insulated. The insulation must be produced on site by Buyer.

### Third Party Products

Products of other manufacturers, which are operated or integrated together with the machines or plants of Seller do not fall within Seller's liability. Buyer is responsible for all personal injuries and property damages that are caused by the operation and/or malfunction of such products and/or control units.